A LETTER FROM A MEMBER OF THE House of Commons of *Ireland*

To a GENTLEMAN of the

Long Robe in *Great-Britain*:

CONTAINING

An ANSWER to ſome OBJECTIONS made againſt the Judicatory Power of the Parliament of *Ireland*.

To which is added,

The late Duke of *LEEDS*'s REASONS for Proteſting againſt a Vote made in the Houſe of Lords in *England*, which declared a certain Tryal before the Houſe of Lords in *Ireland* to be *coram non Judice*.

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An ANSWER *to ſome* OBJECTIONS *made againſt the Judicatory Power of the Parliament of* Ireland.

In a LETTER to a Friend.

SIR, *Dublin*, Aug. 11, 1719.

I Am far from taking upon me to enter into a Debate with you concerning *Matters of Law*, wherein your Knowledge is by all allow'd to be very great, and I muſt confeſs mine to be very ſmall indeed. But in a Caſe of ſuch Conſequence, as is now under Debate, I take it to be my Duty to let you and all Men know, that I do not form my Opinion upon any other

Ground, than what, in my own Reaſon and Conſcience, I am fully and clearly convinced of.

You aſſert, that the Legiſlature of *England*, and now of *Great Britain*, has full Power and Authority to bind us of this Kingdom, without any Conſent of ours either demanded or given: Which you prove from hence, Becauſe it is a frequent Practice with the Subjects of *Ireland* to get private Acts of Parliament *there* paſſed, for the ſelling or ſettling of their Eſtates, the Validity of which has never yet been called in Queſtion. And where-ever the *Supreme Legiſlative Power* reſides, there, and there only, you ſay, the *Supreme Power of Judicature* muſt reſide alſo: From whence you take the Conſequence to be plain, that therefore a Cauſe, which has been heard and adjudged in Parliament

liament here, may yet be reheard, and our Judgment reverſed or altered, in the Parliament of *Great Britain*.

Whether they of this Kingdom do well in thus procuring private Acts of Parliament on the other Side of the Water; or Whether the Conſent of all the Parties who are, or may be, affected by ſuch an Act, is not as neceſſary, as it is conſtantly required, and always preſuppoſed to the paſſing of it: or, Laſtly, How far an Act of Parliament paſſed in *Great Britain*, without our Conſent, or contrary to it, is binding upon us (I mean *de Jure*) are Points which at this Time I ſhall not pretend to meddle with. But upon a Suppoſition, that the *Supreme Power of Judicature* over this Kingdom, and the Parliament of it, is veſted in the *Legiſlature* of

Great

Great Britain; I muſt demand, Is the *Britiſh* Houſe of Peers the *Legiſlature* of that Kingdom? Or when a Cauſe is carried from hence to thoſe Peers, can it be truly ſaid to be carried before the *Legiſlature*? If the King, Lords and Commons of *Great Britain*, ſhall join in an Act of Parliament, and thereby enact that the *Britiſh* Houſe of Peers ſhall be the Supreme Court of Judicature over this Kingdom of *Ireland*; no doubt but we muſt ſubmit to it, becauſe we cannot help ſo doing: but until ſuch an Act is paſſed (which I am perſuaded never will be) it will not follow from what you aſſert, and I at preſent for Argument's ſake ſuppoſe that the *Britiſh* Peers are the *Supreme Judicature* over this Kingdom; except you will ſay that the *Legiſlature* of *Great Britain* reſides in them alone.

When,

When, in behalf of our Parliamentary Juriſdiction, it was urged that every Cauſe brought before us is, in the Stile of our Law, *Coram-Rege in Parliamento*; and therefore by Interpretation of Law, ſuppoſed to be judged *by the King in Parliament*; and that by the Conſtitution of this Kingdom, which is exactly modell'd according to that of *England*, there is no higher Court of Judicature than that of the King in his Parliament: Your Anſwer was that *Coram Rege in Parliamento*, originally and truly was to be underſtood of the *King in full Parliament*; where Lords and Commons, who anciently ſate in one Aſſembly, were met together with him: And that when any Cauſe was thus judged by the King in Parliament, it was the ſame thing as if it had been determined by a formal

mal *Act of Parliament*, becauſe the whole Legiſlature concurred in the Determination; but that now the Caſe is otherwiſe, the Lords and Commons not ſitting, as formerly, in one Aſſembly, but a-part in two diſtinct Houſes, and neither the King, nor his Lieutenant or Deputy, being preſent in either of them, except upon ſome Special Occaſions: So that it cannot *now* be ſaid of a Cauſe brought before the Houſe of Lords, that it is *Coram Rege in Parliamento*, as anciently it uſed to be; and that therefore all that is built upon this Notion, is utterly deſtitute of a ſolid Foundation.

For a Reply hereunto, I muſt firſt obſerve, that when King, Lords and Commons in *England*, and the King's chief Governor, the Lords and Commons in *Ireland*, formed in each ſeveral Kingdom but one Aſſem-

Aſſembly (which is allowed to have been the ancient Cuſtom) they thus ſate together in a twofold Capacity, that is to ſay, a *Legiſlative* and a *Judicial*. As *Legiſlators*, indeed, it was their Office to repeal old Laws and make new ones, as they found the good of the Nation to require: But as *Judges*, they were confin'd to determine all Cauſes that came before them, by the Laws that were then *already in being*. Nor would it have been agreeable to the Conſtitution, or in itſelf reaſonable for them, when a Cauſe between Party and Party came before them, to make a new Law for the determining of it.

In proceſs of time the Commons made it their Choice to withdraw, and ſit in a diſtinct Houſe by themſelves; and the King, or his Vicegerent by him commiſſioned, ſeldom came in Perſon to the Parlia-

ment, except it were, juſt to propoſe ſomething to them; or elſe to give the Royal Aſſent to ſome Law or Laws by them formed: but ſtill the *Legiſlature*, altho' in another Method, was *actually* exercis'd by *all the ſame Perſons*, who formerly had had a Part in it; every new Law being firſt to paſs through each Houſe, and then to receive the Royal Aſſent, before it could lay any Obligation upon the Subjects.

But as for the *Judicature*, it was in the Nature of the thing impracticable, for all the ſame Perſons, thus acting ſeparately, to have the like ſhare in it as formerly they had, and as they ſtill continued to have in the *Legiſlature:* It being abſolutely neceſſary, that all who are to give their Judgment in a Cauſe, ſhould be preſent at the hearing of it.

Muſt then the Subject loſe the benefit of having recourſe to the

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Supreme Judicature, upon this Separation thus by Agreement made between the King, Lords and Commons? It was not reaſonable that it ſhould be ſo; neither in fact do we find that it was ſo: but ſuch Cauſes as, before the Separation, uſed to be brought into the *full Parliament*, continued afterwards to be brought into the *Houſe of Peers* (tho' the *King* and the *Commons* had withdrawn themſelves) and there to receive their final Determination.

But it is ſaid that Cauſes thus brought into rhe *Houſe of Peers*, cannot be ſaid to be *Coram Rege in Parliamento*. I anſwer, that ſuch Expreſſions as theſe, which our Law ſometimes makes uſe of, are to be underſtood and interpreted not always according to their ſtrict litteral Signification, but ſometimes according to Uſe and Cuſtom.

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Anciently the King us'd in his own Perſon to ſit in the Court of *King's-Bench*, for which Reaſon the Proceedings in that Court were ſaid to be *Coram Rege*. And tho' the King has long ſince withdrawn his Perſon, yet both the Authority and Style of the Court continue ſtill the ſame. And the Proceedings therein are ſtill by Conſtruction of Law ſuppos'd to be *before the King*: Nor is the Judgment of the Court of leſs Validity, than when the King himſelf us'd to be there.

In like manner, altho' the King in *Perſon* ſeldom comes to the Parliament, yet in Matters of *Judicature*, his *Authority* remains as much with them, *without his perſonal Intervention*, as formerly *with it*. And altho' the Commons have withdrawn themſelves into another Houſe; yet as they have left the Lords

Lords in the ſole Poſſeſſion of the *Place*, where the Supreme Judicature always uſed to be exercis'd: either they muſt be ſuppos'd to have left them alſo in Poſſeſſion of the Judicature it ſelf, or elſe to have made it impracticable that ſuch Judicature ſhould at all be exerciſed (as I have already ſaid) and thereby to have depriv'd the Subjects of that Relief, which formerly they were entitled unto, whenever they found themſelves aggrieved in any of the inferior Courts. And therefore according to the Interpretation of the Law, there is good reaſon to ſay, that a Cauſe regularly brought into the Houſe of Lords, is *before the King in Parliament*; as there is alſo to ſay, that a Suit duly commenced in *the Court of King's-Bench*, is *before the King in that Court.*

They who would place the *Supreme Judicature* over this as well

as

as the Neighbouring Kingdom in *the* Britiſh *Houſe of Peers*, are under a Neceſſity of granting all that I have laſt been ſaying, as far as the ſame relates to *that Houſe* in particular: or elſe there will be no way for them to place that *Judicature* in *them* alone, which of Old was confeſſedly exerciſed by *them*, in conjunction with the *King* and *Commons*, all ſitting together in *one Aſſembly*. But ſtill it is demanded upon what Grounds we apply all this to the *Parliament*, or *Houſe of Lords of* Ireland, thereby to eſtabliſh the like *Parliamentary Judicature* here, as by all is allowed to have been in *England* before its Union with *Scotland*, and now to be in *Great Britain*?

I am very little converſant with Books of our Law: but it was natural for me, upon ſuch an Occaſion

ſion as this, to look into the Lord Chief Juſtice *Cook*'s fourth Inſtitute of *the Juriſdiction of Courts*; where all that I contend for is, I think, very fully aſſerted.

For there he aſſures us, that *not only King* John, *as all Men agree*; *but* Henry *the Second alſo*---*did ordain and command, at the Inſtance of the* Iriſh, *that ſuch Laws as he had in* England, *ſhould be* of *force and obſerved in* Ireland. And then he adds, *hereby* Ireland *being of it ſelf a* DISTINCT DOMINION, *and* NO PART *of the Kingdom of* England, *was to have Parliaments held there as* England.

And that the Parliament of *Ireland*, by the Conſtitution of the Kingdom, is to have like Authority both of *Legiſlature* and *Judicature* with that of *England*, he plainly

plainly proves from an old Ordinance *pro ſtatu Hiberniæ* made in the Reign of *Edward* the Third, and among the Records in the *Tower* of *London*. The Words of the Record are, *Volumus & præcipimus quod noſtra & terræ noſtræ negotia, præſertim majora & ardua, per peritos Conſiliarios, ac Prælatus & Magnates, & quoſdam de diſcretioribus hominibus in Parliamentis tractentur, diſcutiantur, & terminentur.* From which he makes this Collection, *This Ordinance* (ſays he) *doth regulate the Parliaments in* Ireland, *according to the INSTITUTION AND END of the Parliaments in* England.

If ſuch Law Books as theſe are of no Authority, or if the plaineſt Expreſſions in them are to be evaded by artful Interpretations or ſubtle Diſtinctions, why are they put into our Hands to deceive us?

But

But if the Lord *Cook*'s Authority be good (eſpecially where it is not contradicted by ſome greater Authority) and his plain Meaning is to be followed; what can be more evident, than that if both *Legiſlature* and *Judicature* belong to the very *Inſtitution* and *End* of the *Engliſh* Parliament, the ſame muſt alſo in like manner belong to the Parliament of *Ireland*?

There is no *Statute*, that I know of, which veſts the Parliamentary Judicature of *England* peculiarly in the Houſe of Lords alone. Whatever Power, therefore, of this ſort belongs to that moſt Honourable Houſe, muſt belong to it by *Common Law*. And ſince the *Common Law*-part of the Conſtitution of *Ireland*, is allow'd to be the ſame with that of *England*, either ſome particular Cuſtom, Records, or Act

of Parliament to the contrary muſt be ſhewn; or elſe they who plead for the Power of Judicature of the *Engliſh* or *Britiſh* Peers, can upon no juſt ground deny the ſame to be in like manner in thoſe of *Ireland*. And if by the Record but now quoted from the Lord *Cook*, all Buſineſs of Importance belonging to this Kingdom, is to be *determined* in Parliament here; it is abſurd to ſay, that a Cauſe thus *determined* is yet afterward liable to the Cognizance of any other Judicature.

If I am thought to be a little more zealous in this Matter, than what, in the Opinion of ſome, I ought to be; I muſt crave leave to ſay, that however a Man may be allowed to behave himſelf, or to make Conceſſions with reſpect to his own private and perſonal Right: yet it is far otherwiſe, when a Right that belongs to the Publick Community,

munity, and even the Conſtitution of the Kingdom itſelf lies at ſtake, which I take to be the preſent caſe. And ſince I have the Honour to be a Member of the Parliament of *Ireland*, I cannot but think it would be a Breach of that Truſt, which, in conjunction with others, is repoſed in me, if to my Power I were not *zealous* in maintaining and ſtanding up for every thing which I am perſwaded is a Right belonging to the very fundamental Conſtitution of that Body: Which therefore I cannot diſpence with my ſelf to ſit ſtill, and ſilently ſee reduced almoſt to the Level of a Grand Jury; as, I think, it will be, in caſe it be deprived of its Power of Judicature.

And I hope it will be no Offence upon this occaſion to add, that altho' I am of *Engliſh* Parentage, and entirely attached to the true Intereſt of *Great Britain*, yet all the ſmall

Fortune

Fortune which I have lies in *Ireland*: Nor have I in this World any other View either for my ſelf or mine, but within this Kingdom alone; whoſe Rights and Privileges I, for this Reaſon alſo, the more earneſtly deſire ſafely to tranſmit down to Poſterity. And if this has a little quicken'd my Zeal in what I have either here written, or at any time ſpoken concerning this whole Affair, I hope it will be at leaſt a pardonable Fault in.

SIR. Yours, &c.

I BELIEVE it will be eaſily allow'd, that the late Duke of Leeds *was as wiſe a Man, and as jealous of the Rights of the Peerage, as any one in his Time: So that I may well preſume his Opinion cannot fail of having now its due Weight with all Men, that conſider the Subject of the preceding Letter; not ſway'd by Intereſt or Paſſion, but judging from the Nature of the Thing*

it ſelf, and with a View of beneſiting the whole and every Part of the Britiſh *Empire. Wherefore I add in this Place that great Man's*

REASONS

For Proteſting againſt a Vote *made in the Houſe of Lords in* England, *which declared a certain Tryal before the Houſe of Lords in* Ireland *to be* coram non Judice.

1. BECAUSE upon the Conqueſt of *Ireland*, by *Henry* II. He introduced the Laws of *England* into that Kingdom, and ſent them over the *Modus tenendi Parliamenta, in terminis* the ſame with that of *England*: In which Record, it is ſaid, That ſuch things may be Examined and Corrected *in pleno Parliamento & non alibi.*

2. Becauſe the 30th Year of King *Henry* III. it was provided, That all the Laws and Cuſtoms which are

enjoyed in *England*, ſhall be in *Ireland*, and the ſaid Lands ſhall be Subject thereunto and Governed thereby, *Sicut Dominus Johannes cum ultimò eſſet in Hiberniâ ſtatuit & fieri mandavit; & quod omnia Brevia de Communi Jure quæ Currant in Anglia ſimiliter Currant in Hibernia.*

3. Becauſe it appears by other Ancient Records, *Quod terra Hiberniæ intra ſe habet omnes & omnimodas Curias prout in Angliæ.*

4. Becauſe King *Edward* III. in the 29th Year of his Reign, Ordained for the Quiet and good Government of the People of *Ireland*; That in all Caſes whatſoever, Error in Judgment, Records and Proceſs in the Courts of *Ireland*, ſhall be Corre cted and Amended in Parliament in *Ireland*,

5. Becauſe a Conqueror by the Laws of *England* and of Nations, having Power to introduce what Laws

Laws he will in the Conquered Country : And King *Henry* II. purſuant to that Power, having introduced the Laws of *England*, and particularly that of holding Parliaments in *Ireland*, the Houſe of Lords in Parliament in *Ireland* may proceed to hear and determine Judicially ſuch Matters which ſhall be brought before them, in the ſame manner as the Lords in Parliament in *England*.

6. Becauſe, purſuant to the many Conceſſions made by King *Henry* II. King *John*. King *Henry* III. and other Kings of *England*, the Lords in Parliament of *Ireland* have proceeded to Correct and Amend Errors in Judgment, and Decrees in the Courts of *Ireland*; as appears by the ſeveral Precedents certified over to your Lordſhips, and their Judgments never before called in queſtion : Many of them being Irregular

regular, and therefore preſumed to have been by a good and lawful Juriſdiction; otherwiſe, they would have been by our Anceſtors, who were zealous Aſſertors of their Rights, long before this called in queſtion.

7. The Order declaring that the Appeal was *Coram non Judice*, and *Null and Void*, will call all other Judgments and Decrees in queſtion, under which many Eſtates have been purchaſed, ſettled and enjoyed; which will be of Fatal Conſequences to many Families, and create Diſcontent and Diſſatisfaction in that Kingdom.

8. Becauſe the declaring the ſaid Appeal to be *Coram non Judice*, and *Null and Void*, ſtrikes at, and tends to the Deſtruction of the Juriſdiction of this Houſe: For *Ireland* having *omnes & omnimodas Curias prout in Anglia*, muſt Include the

the High Court of Parliament; and being an exact Picture of the High Court of Parliament of *England*, if they cannot Judicially Hear and Determine Appeals, Writs of Error and Impeachments, It may be from thence alledged they cannot here.

9. Becauſe the Peers of *Ireland* had little elſe left them but their Judicature, which if taken away, will be of little Eſteem there, many of the Peers of *England* having ſome of their Titles of Honour from that Kingdom.

10. Becauſe this Reſolution ſtrikes at, and abridges the King's Prerogative in *Ireland*, all Appeals and Writs of Error in Parliament being *Coram Rege in Parliamento :* And therefore, theſe Words, *Coram non Judice*, take from the King the Judicial Power which is given him there.

11. Becauſe it is the Glory of the *Engliſh* Laws, and the Bleſſing

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attending *Engliſhmen*, That they have Juſtice adminiſtred at their Doors, and not to be drawn as formerly to *Rome* by Appeals which greatly impoveriſhed the Nation: And by this Order, the People of *Ireland* muſt be drawn from *Ireland* hither, whenſoever they receive any Injuſtice from the *Chancery* there; By which means, poor Men muſt be trampled on, as not being able to come over to ſeek for Juſtice.

12. The Danger of Altering, Changing, or Leſſening a Conſtitution (for above 500 Years unſhaken, or ſo much as call'd in queſtion) in any one Thing, the Cuſtom and Uſage of Courts being the Law of Courts, may occaſion the Deſtruction of the whole. The Judicial Power of the Houſe of Peers in *Ireland*, in Criminal Cauſes, by way of Impeachment and otherwiſe, may by the ſame Reaſon be called

called in Queſtion, as their Judicature in Civil Cauſes, which will incourage evil-diſpoſed Men, eſpecially thoſe in Employment in that Kingdom, who are generally very Arbitrary, to act wickedly: And the better we preſerve the Conſtitution of *Ireland*, and of thoſe Plantations dependent on *England*, the better we ſhall preſerve our own; And they will be a Barrier to ours, to prevent any Invaſions of theirs. And ſince the Kings of *England* have in all Times, in Matters relating to the Revenue made their Grants, by Letters Patent, and not only Impowered the Parliament of *Ireland* to Hear, Correct, Reform and Amend Them, but alſo acquieſced in their Judgment, It ought not now to be queſtioned.

13. Becauſe this taking away the Juriſdiction of the Lords Houſe in *Ireland*, may be a means to Diſquiet the

the Lords there, and Diſappoint the King's Affairs.

14. Becauſe the Judicial Power of the Houſe of Lords of *Ireland* is in no Reſpect altered by an Act of Parliament. The Statute of the 10th of *Henry* VII. *Capite* 4*to*, called *Poynings* Law, only directs a New Form of paſſing Bills into Law; but alters nothing of the Judicial Power: but neither allows or enables them to make the Laws as they pleaſe. And this will as well hold againſt the Juriſdiction of this Houſe, which ought not to be ſuffered.

FINIS.

—— *Hoc etenim ſunt omnes jure moleſti,*
Quo fortes. Horat. Sat. 7. Lib. 1.